

Senate Bill No. 1406

Passed the Senate August 18, 2016

Secretary of the Senate

Passed the Assembly August 11, 2016

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 54.27 to the Civil Code, and to amend Section 8299.08 of the Government Code, relating to disability access.

LEGISLATIVE COUNSEL'S DIGEST

SB 1406, Mendoza. Construction-related accessibility: education entities.

Existing law provides that individuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, public facilities, and other public places. Existing law requires an attorney who provides a demand letter or sends or serves a complaint containing a claim of a violation of any construction-related accessibility standard, as defined, with respect to a place of public accommodation, to send a copy of the demand letter or complaint to the California Commission on Disability Access within 5 business days of providing the demand letter or sending or serving the complaint. Existing law further requires an attorney who sends or serves that complaint to notify the commission of judgment, settlement, or dismissal of the claim or claims alleged in the complaint and other specified information within 5 business days of the judgment, settlement, or dismissal.

This bill, with specified exceptions, would also require an attorney who provides a prelitigation letter or sends or serves a complaint alleging a construction-related accessibility claim, as defined, against an education entity, as defined, to send a copy of the prelitigation letter or complaint to the commission within 5 business days of providing the prelitigation letter or sending or serving the complaint, would require the attorney to also submit information about the complaint with the copy of the complaint, and would further require the attorney to submit the notification of judgment, settlement, or dismissal to the commission, as described above. The bill would subject an attorney who fails to comply with these requirements to discipline and would require the commission to review and report on the prelitigation letters,

complaints, and notifications of case outcomes the commission receives pursuant to these requirements, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 54.27 is added to the Civil Code, to read:

54.27. (a) An attorney who provides a prelitigation letter to an education entity shall do both of the following:

(1) Include the attorney's State Bar license number in the prelitigation letter.

(2) Within five business days of providing the prelitigation letter, send a copy of the prelitigation letter to the California Commission on Disability Access.

(b) An attorney who sends or serves a complaint against an education entity shall do both of the following:

(1) Send a copy of the complaint and submit information about the complaint in a standard format specified by the California Commission on Disability Access to the commission within five business days of sending or serving the complaint.

(2) Notify the California Commission on Disability Access within five business days of judgment, settlement, or dismissal of the claim or claims alleged in the complaint of the following information in a standard format specified by the commission:

(A) The date of the judgment, settlement, or dismissal.

(B) Whether or not the construction-related accessibility violations alleged in the complaint were remedied in whole or in part after the plaintiff filed a complaint.

(C) If the construction-related accessibility violations alleged in the complaint were not remedied in whole or in part after the plaintiff filed a complaint, whether or not another favorable result was achieved after the plaintiff filed the complaint.

(c) A violation of paragraph (2) of subdivision (a) or subdivision (b) shall constitute cause for the imposition of discipline of an attorney if a copy of the prelitigation letter, complaint, or notification of a case outcome is not sent to the California Commission on Disability Access within five business days. In the event the State Bar receives information indicating that an attorney has failed to send a copy of the prelitigation letter, complaint, or notification of a case outcome to the California Commission on Disability Access within five business days, the

State Bar shall investigate to determine whether paragraph (2) of subdivision (a) or subdivision (b) has been violated.

(d) Notwithstanding subdivisions (a) and (b), an attorney is not required to send to the California Commission on Disability Access a copy of any subsequent prelitigation letter or amended complaint in the same dispute following the initial prelitigation letter or complaint, unless that subsequent prelitigation letter or amended complaint alleges a new construction-related accessibility claim.

(e) A prelitigation letter or notification of a case outcome sent to the California Commission on Disability Access shall be for the informational purposes of Section 8299.08 of the Government Code.

(f) The California Commission on Disability Access shall review and report on the prelitigation letters, complaints, and notifications of case outcomes it receives in the same manner as provided in Section 8299.08 of the Government Code.

(g) Paragraph (2) of subdivision (a) and subdivision (b) shall not apply to a prelitigation letter or complaint sent or filed by an attorney employed or retained by a qualified legal services project or a qualified support center, as defined in Section 6213 of the Business and Professions Code, when acting within the scope of employment in asserting a construction-related accessibility claim. The Legislature finds and declares that qualified legal services projects and support centers are extensively regulated by the State Bar of California, and that there is no evidence of any abusive use of demand letters or complaints by these organizations. The Legislature further finds that, in light of the evidence of the extraordinarily small number of construction-related accessibility cases brought by regulated legal services programs, and given the resources of those programs, exempting regulated legal services programs from the requirements of this section to report to the California Commission on Disability Access will not affect the purpose of the reporting to, and tabulation by, the commission of all other construction-related accessibility claims.

(h) Nothing in this section applies to a claim for money or damages against a public entity governed by Division 3.6 (commencing with Section 810) of Title 1 of the Government Code or makes the requirements of this section applicable to such a claim.

(i) For purposes of this section, the following terms have the following meanings:

(1) “Complaint” means a civil complaint that is filed or is to be filed with a court and is sent to or served upon a defendant on the basis of one or more construction-related accessibility claims.

(2) “Construction-related accessibility claim” or “claim” means any claim of a violation of any construction-related accessibility standard, as defined in paragraph (6) of subdivision (a) of Section 55.52, with respect to a public building, public facility, or other public place of an education entity. “Construction-related accessibility claim” does not include a claim of interference with housing within the meaning of paragraph (2) of subdivision (b) of Section 54.1, or any claim of interference caused by something other than the construction-related accessibility condition of the property, including, but not limited to, the conduct of any person.

(3) “Education entity” means the Regents of the University of California, the Trustees of the California State University and the California State University, the California Community Colleges Office of the Chancellor and the California Community Colleges, a K-12 school district, or any local education agency.

(4) “Prelitigation letter” means a prelitigation written document that alleges the site is in violation of one or more construction-related accessibility standards, as defined in paragraph (6) of subdivision (a) of Section 55.52 and is provided to the education entity whether or not the attorney intends to file a complaint, or eventually files a complaint, in state or federal court. A prelitigation letter does not include a claim for money or damages against a local public entity governed by Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

SEC. 2. Section 8299.08 of the Government Code is amended to read:

8299.08. The commission shall compile the following data with respect to any demand letter, prelitigation letter, or complaint sent to the commission pursuant to Section 54.27 or 55.32 of the Civil Code and post the information on its Internet Web site, pursuant to the following:

(a) The commission shall identify the various types of construction-related physical access violations alleged in the demand letters and in the complaints, respectively, and shall

tabulate the number of claims alleged for each type of violation in the demand letters and complaints, respectively. For purposes of this subdivision, any demand for money letters shall be grouped as demand letters.

(b) Periodically, but not less than every six months beginning July 31, 2013, the commission shall post on its Internet Web site a list, by type, of the 10 most frequent types of accessibility violations alleged in the demand letters and in the complaints, respectively, and the numbers of alleged violations for each listed type of violation for the prior two quarters.

(c) The commission shall, on a quarterly basis, identify and tabulate the number of demand letters and complaints received by the commission. The commission shall further ascertain whether a complaint was filed in state or federal court and tabulate the number of complaints filed in state or federal court, respectively. This data shall be posted on the commission's Internet Web site periodically, but not less than every six months beginning July 31, 2013.

(d) Commencing in 2014, and notwithstanding Section 10231.5, the commission shall make an annual report to the Legislature and the Chairs of the Senate and Assembly Committees on Judiciary by January 31 of each year of the tabulated data for the preceding calendar year as set forth in subdivisions (a) to (c), inclusive. A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795.

Approved _____, 2016

Governor